

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Amendment of Section 73.622(i),
Final DTV Table of Allotments,
Television Broadcast Stations.
(Buffalo, New York)

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MB Docket No. 09-46
RM-11524

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: May 20, 2009

Released: May 21, 2009

By the Chief, Video Division, Media Bureau:

1. The Commission has before it a Notice of Proposed Rulemaking¹ issued in response to a petition for rulemaking filed by New York Television, Inc. ("New York TV"), the licensee of station WNYO-DT, DTV channel 34, Buffalo, New York. New York TV has requested the substitution of DTV channel 49 for its assigned DTV channel 34 at Buffalo, New York. New York TV filed comments. No other comments were received.

2. We believe the public interest would be served by substituting DTV channel 49 for DTV channel 34. The channel substitution will permit station WNYO-DT to provide service to viewers within the analog service area who cannot receive the station on channel 34 due to a co-channel DTV allotment located in Peterborough, Ontario, Canada. The station will also replicate nearly 100% of its current analog service, while expanding service to those outside the current DTV service area.

3. DTV channel 49 can be substituted for DTV channel 34 at Buffalo, New York, as proposed, in compliance with the principal community coverage requirements of Section 73.625(a) of the Commission's rules, at coordinates 42-46-58 N. and 78-27-28 W. In addition, we find that this channel change meets the technical requirements set forth in Sections 73.616 and 73.623 of the Commission's rules with the following specifications:²

City and State	DTV Channel	DTV Power (kW)	Antenna HAAT (meters)	DTV Service Pop. (thous.)
Buffalo, New York	49	198	376	1509

4. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to Section 553(d)(3) of the Administrative Procedures Act.³ An expedited effective date is necessary in this case to ensure that station WNYO-DT can provide

¹ *Buffalo, New York*, DA 09-739 (released April 2, 2008).

² 47 C.F.R. §§ 73.616 and 73.623.

³ 5 U.S.C. § 553(d)(3).

improved service to the market as quickly as possible.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's rules, IT IS ORDERED, That effective immediately upon the date of publication of this Report and Order in the Federal Register, the DTV Table of Allotments, Section 73.622(i) of the Commission's rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>
Buffalo, New York	14, 32, 33, 38, 39, *43, 49

6. IT IS FURTHER ORDERED, That within 30 days of the effective date of this Order, New York Television, Inc., shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV channel 49 in lieu of DTV channel 34.

7. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning the proceeding listed above, contact David J. Brown, Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau